

In the Matter of the Appeal by) Case No. 97-3274
)
 [REDACTED]) DECISION
)
 For Reinstatement After Automatic)
 Resignation from the Position)
 of Satellite Wagering Facility)
 Janitor (Permanent Intermittent))
 at the 22nd District Agricultural)
 Association at Del Mar)

IT IS SO ORDERED: December 29, 1997

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BEFORE THE DEPARTMENT OF PERSONNEL ADMINISTRATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal by

[REDACTED]

Case No. 97-3274

For reinstatement after automatic
resignation from the position of
Satellite Wagering Facility Janitor
(Permanent Intermittent) at the
22nd District Agricultural Association
at Del Mar

PROPOSED DECISION

This matter came on regularly for hearing before
Melvin R. Segal, Administrative Law Judge, State Personnel
Board, on October 29, 1997, at San Diego, California.

Appellant, [REDACTED], represented himself.

Respondent was represented by Laura D. Freedman,
Staff Counsel, Department of Food and Agriculture.

Evidence having been received and duly considered, the
Administrative Law Judge makes the following findings of fact
and Proposed Decision:

I

The above appeal for reinstatement after automatic
resignation effective June 7, 1997, and appellant's appeal
therefrom, comply with the procedural requirements of Government
Code section 19996.2.

II

Respondent separated appellant pursuant to Title 2, California Code of Regulations, section 599.828, which provides that:

"In addition to the provisions of Government Code Section 19996.2, an intermittent employee who waives three requests by the employing department to report for work may be automatically separated from the intermittent appointment, provided that no waiver shall be counted if the employee was unable to come to work due to illness or other good reason (i.e., a reason that is acceptable to the appointing power)."

III

Respondent based its notice of separation on appellant's unauthorized absences on May 3, 4, 11, 18, and June 8 and 9, 1997.

IV

Appellant testified that on May 3, 1997, he twisted his ankle at his other employment (with the City of San Diego) as he was leaving work. He testified that he called and was told to come in if he could, but that he was unable to do so.

Appellant testified that on May 4, 1997, his ankle still disabled him from work. He testified that he called and reported that to his supervisor.

([REDACTED] continued)

Appellant testified that on May 11, 1997, he called in sick because he was not feeling well. He could not recall the person to whom he spoke.

Appellant testified that on May 18, 1997, his car broke down, and he called to report that to his supervisor.

Appellant testified that on June 8 he had a family problem and called to explain that he would be absent on June 8 and June 9. He testified that on June 9 he was told not to report for work because he had been terminated.

V

[REDACTED] Assistant Fair Manager, testified that she was disturbed by appellant's pattern of absences. (All the days discussed herein were Sundays, except May 3, which was a Saturday, and June 9, which was a Monday.) May 3 was Kentucky Derby Day, which is the Fair's busiest day of the year. Weekends are also especially busy days.

[REDACTED] agreed that individually each of appellant's excuses could provide a basis for an excused absence.

VI

[REDACTED] was appellant's supervisor at the times in question.

([REDACTED] continued)

[REDACTED] testified that on May 3, he received a call from appellant. Appellant told [REDACTED] that he was still at work (at the City) and that his shift would run over to his shift at the Fair. Appellant did not mention any injury.

[REDACTED] testified that at 4:06 p.m. on May 4, appellant left a message on his voice mail reporting that he twisted his ankle at the City and appellant would not be in for his 4:30 p.m. shift.

[REDACTED] testified that on May 18, appellant called and reported that his car broke down. Appellant did not report for work.

[REDACTED] testified that appellant called on June 8, and said he had a family problem. Appellant said that he would not be in on June 8 and would probably not be in on June 9.

During a conversation relating to one of appellant's absences, appellant told [REDACTED] that he didn't know if he could always make it to work because his other job paid more.

VII

Appellant's excuses for May 3 and 4 are not accepted.

[REDACTED] testimony that appellant called on May 3 and said that his City shift ran into his shift at the Fair is believed. Appellant did not present any medical evidence that he injured his ankle on May 3 or May 4, and it is not believed that any injury prevented him from working at the Fair on those days.

[REDACTED] continued)

It is not believed that appellant called on May 11, nor is it believed that he was too ill to work.

Appellant's excuse for May 18 (car broke down) was not accepted by respondent. It was under no obligation to accept that excuse.

Likewise, appellant's excuse for June 8 (family problem) was not accepted by respondent. Again, it was not obligated to accept that excuse.

When appellant reported on June 8 that he would not be in on June 9, respondent was within its rights to accept that as an absence for June 9. (Even if it were not, appellant still has five unexcused absences.)

* * * * *

PURSUANT TO THE FOREGOING FINDINGS OF FACT, THE ADMINISTRATIVE LAW JUDGE MAKES THE FOLLOWING DETERMINATION OF ISSUES:

Respondent acted in accordance with the requirements of Title 2, California Code of Regulations, section 599.828. Appellant failed to show that his absences were due to illness or other good reason. "Employers have the right to expect their employees to report for work on the day and at the time agreed . . . " *Frances P. Gonzales* (1993) SPB Dec. No. 93-13, 4; *Lesbhia F. Morones* (1993) SPB Dec. No. 93-23, 6.

([REDACTED] continued)

In that appellant waived "three requests by the employing department to report for work" he was appropriately separated.

* * * * *

WHEREFORE IT IS DETERMINED that the request of [REDACTED] for reinstatement after automatic resignation effective June 7, 1997, is denied.

* * * * *

I hereby certify that the foregoing constitutes my Proposed Decision in the above-entitled matter and I recommend its adoption by the Department of Personnel Administration as its decision in the case.

DATED: November 10, 1997

Melvin R. Segal

Melvin R. Segal
Administrative Law Judge
State Personnel Board